

STATE OF CONNECTICUT
CONNECTICUT STATE BOARD OF EXAMINERS
FOR PHYSICAL THERAPISTS

Leonard Vigliatore, P.T.
License No. 004812

Petition No. 2001-0104-014-001

MEMORANDUM OF DECISION

Procedural Background

On August 5, 2002, the Department of Public Health ("the Department") presented the Connecticut State Board of Examiners for Physical Therapists ("the Board") with a Statement of Charges ("the Charges") brought against license number 004812 of Leonard Vigliatore, P.T. ("respondent"). Dept. Exh. 1. The Charges allege that respondent violated Conn. Gen. Stat. § 20-73a. Dept. Exh. 1.

On August 15, 2002, the Department sent the Notice of Hearing and the Charges to respondent via certified mail, return receipt requested. Dept. Exh. 1.

On September 25, 2002, a hearing was held regarding the allegations contained in the Charges, before a duly authorized panel of the Board comprised of Christine J. Kasinskas, P.T., Joan Grey, P.T., and Krystyna Piotrowska, M.D.

During the hearing, respondent answered the Charges orally. Tr., pp. 13-16.

The Board conducted the hearing in accordance with Conn. Gen. Stat. Chapter 54 and the Regulations of Connecticut State Agencies ("the Regulations") §19a-9a-1 *et seq.* Respondent appeared with his attorney, Kevin F. Collins, Esq., of Stamford, CT. Matthew Antonetti, Esq., represented the Department. Both the Department and respondent presented evidence, conducted cross-examination, and provided arguments on all issues.

All Board members involved in this decision attest that they have either heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

Allegations

1. In paragraph 1 of the Charges, the Department alleges that respondent is and has been at all times referenced in the Charges, the holder of Connecticut license number 004812 to practice as a physical therapist.
2. In paragraph 2 of the Charges, the Department alleges that on May 7, 1997, the Board ordered a Reinstatement Consent Order in Petition Number 97III-014-006 ("the Consent Order") that, in part, placed respondent's license on probation for a period of five years. Such disciplinary action was based, in part, upon respondent's admitted engagement in, and conviction for, mail fraud in New York from 1988 through 1992.
3. In paragraph 3 of the Charges, the Department alleges that the Consent Order provides, in part, that respondent is responsible for the provision of reports from his supervisor to the Department every other month for the first year of the probationary period and quarterly thereafter, stating that respondent is practicing with reasonable skill and safety.
4. In paragraph 4 of the Charges, the Department alleges that at all relevant times, respondent was employed as a physical therapist with Peak Wellness, Incorporated ("Peak Wellness") in Greenwich, Connecticut. During the course of his employment with Peak Wellness, respondent treated a female patient, G.C.
5. In paragraph 5 of the Charges, the Department alleges that in and around November 2000, respondent telephoned patient G.C. at her home and offered to discount her rate for physical therapy treatment in return for G.C.'s agreement to engage in social interactions with respondent. Patient G.C. informed respondent's employer of respondent's proposition in early December 2000.
6. In paragraph 6 of the Charges, the Department alleges that as a result of G.C.'s complaints, respondent's December 22, 2000, quarterly practice supervisor report stated that respondent was not practicing with reasonable skill and safety because respondent asked a female patient, G.C., out socially.
7. In paragraph 7 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to Conn. Gen. Stat. §20-73a, including but not limited to §20-73a(2).

Findings of Fact

1. Respondent is and has been at all times referenced in the Charges, the holder of Connecticut license number 004812 to practice as a physical therapist. Tr., pp. 13, 14.

2. On May 7, 1997, the Board ordered a Consent Order that placed respondent's license on probation for a period of five years. Such disciplinary action was based, in part, upon respondent's admitted engagement in, and conviction for, mail fraud in New York from 1988 through 1992. Dept. Exh. 5; Tr., p. 14.
3. The Consent Order provides, in part, that respondent is responsible for the provision of reports from his supervisor to the Department every other month for the first year of the probationary period and quarterly thereafter, stating that respondent is practicing with reasonable skill and safety. Dept. Exh. 5; Tr., p. 14.
4. At all relevant times, respondent was employed as a physical therapist with Peak Wellness in Greenwich, Connecticut. Tr., p. 15.
5. From June to October 2000, G.C. received physical therapy treatments two times per week at Peak Wellness. Dept. Exh. 22; Tr., p. 22.
6. Respondent was G.C.'s physical therapist at Peak Wellness. Dept. Exh. 22; Tr., p. 22.
7. Each physical therapy session cost \$150.00. Dept. Exh. 22; Tr., pp. 22, 23.
8. When respondent first quoted the price for each physical therapy session, G.C. became upset and cried because her medical insurance did not cover this type of treatment and she could not afford the treatment. Tr., p. 23.
9. The Friday after the 2000 Thanksgiving, at around 9:00 a.m., respondent called G.C. at home and stated that respondent was concerned about G.C.'s financial problems; and that if G.C. "do what I want you to do", the respondent would discount her rate or otherwise reduce the cost of her treatment. The respondent indicated to G.C., that G.C. "could work it off socially." Dept. Exh. 22; Tr., pp. 25, 26, 46.
10. In December 2000, G.C. reported the incident to respondent's employer. Dept. Exh. 22; Tr., pp. 29, 71, 72.
11. Respondent called G.C. again four times. However, G.C. did not answer the phone. Dept. Exh. 22; Tr., pp. 30, 77
12. As a result of respondent's improper overture to G.C. respondent lost his job, and his December 2000 quarterly practice supervisor report indicated that respondent was incapable of practicing with reasonable skill and safety. Dept. Exh. 3; Tr., p. 32.

Discussion and Conclusions of Law

Conn. Gen. Stat. § 20-13c provides, in pertinent part, that:

The Board of Examiners for Physical Therapists shall have jurisdiction to hear all charges of conduct that fail to conform to the accepted standards of practice . . . said board, if it finds such person to be guilty, may revoke or suspend such person's license or take any of the actions set forth in section 19a-17. . . The causes for which such action may be taken are as follows: . . . ; illegal, incompetent or negligent conduct in the practice of physical therapy

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S. Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, No. CV970573367, Superior Court, J.D. Hartford/New Britain at Hartford, February 19, 1998.

With regard to paragraphs 2, 3, and 4 of the Charges, the Department sustained its burden of proof. Respondent admitted that on May 7, 1997, the Board ordered the Consent Order that placed his license on probation for a period of five years. Such disciplinary action was based, in part, upon respondent's admitted engagement in, and conviction for, mail fraud in New York from 1988 through 1992. Respondent was responsible for providing the Department with bimonthly supervisor reports, stating that respondent was practicing with reasonable skill and safety. Respondent also admitted that while employed at Peak Wellness, he treated patient G.C. Therefore, the Department met its burden of proof with regard to the allegations contained in these paragraphs.

With regard to paragraph 5 of the Charges, the Department sustained its burden of proof in establishing that around November 2000, respondent telephoned G.C. at her home and offered to discount her rate for physical therapy treatments in return for G.C.'s agreement to engage in social interactions with respondent. G.C. informed respondent's employer of respondent's proposition. Respondent contends that he did not engage in inappropriate conduct since he (1) did not engage in sexual relationships with G.C.; (2) only invited her as a guest to the office holiday party; and (3) called her more than once just to clarify the real reason he invited her to the holiday party.

The Board finds G.C.'s testimony to be credible and finds the respondent not to be truthful. G.C.'s testimony was bolstered by the testimony of the Director of Wellness at

the facility. The Board finds that the testimony of the Director of Wellness was credible when she testified that the respondent admitted to her and their supervisor that the respondent had told G.C. that he would figure out a way to treat her and asked her out for a date. Tr., pp. 74-75. At that time, the respondent did not deny that he had asked the patient out socially and did not claim that she had misunderstood the phone conversation in which, according to him, he was only inviting her as a guest to the office holiday party. Id.

The Code of Ethics of the American Physical Therapy Association ("the Code") provides, in pertinent part:

Principle 1: Physical therapists shall respect the rights and dignity of all individuals. . .

Principle 3: Physical therapists accept responsibility for the exercise of sound judgment. . .

Principle 5: Physical therapists seek accurate remuneration for their services that is deserved and reasonable. . .

Principle 7: Physical therapists accept the responsibility to protect the public and the profession from unethical, incompetent, or illegal acts. . .

Dept. Ex. 8.

Section 20-73a of the General Statutes authorizes the Board to take disciplinary action if the licensee's conduct fails to conform to the accepted standards of the practice of physical therapy or if the licensee's conduct constitutes illegal, incompetent or negligent conduct in the practice of physical therapy.

A preponderance of the evidence establishes that the Friday after the 2000 Thanksgiving, at around 9:00 a.m., respondent called G.C. at home and stated that respondent was concerned about G.C.'s financial problems; and that, if G.C. "do what I want you to do", the respondent would discount her rate or otherwise reduce the cost of her treatment. The respondent indicated to G.C., that G.C. "could work it off socially." In offering to reduce or eliminate the cost of the physical therapy in exchange for some type of social interaction with him, respondent failed to treat G.C. with respect and dignity, demonstrated poor judgment, sought improper remuneration, violated the accepted standards of practice of physical therapy and engaged in incompetent and negligent conduct -- all in violation not only of ethical standards but also in violation of § 20-73a.

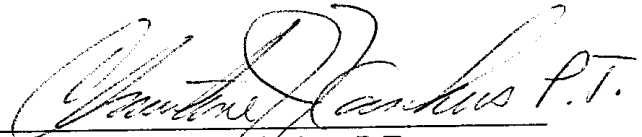
Therefore, the Department met its burden of proof with regard to the allegations contained in paragraph 5 of the Charges. Accordingly, the Board concludes that there is sufficient basis upon which to issue the following order.

Order

Based upon the record in this case, the above findings of fact and the conclusions of law and, taking into consideration respondent's prior disciplinary action for engaging in mail fraud from 1988 through 1992, pursuant to the authority vested in it by Conn. Gen. Stat. § 19a-17 and § 20-73a, the Board orders that Connecticut physical therapist license number 004812 held by Leonard Vigliatore, be revoked.

Connecticut State Board of Examiners for
Physical Therapists

2/19/03
Date


By: Christine J. Kasinskas, P.T.,
Chairperson